THE HON'BLE SRI JUSTICE V. ESWARAIAH

W.P.Nos.10604 of 2004 and 10965 of 2005

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W.P.No.10604 of 2004

Between:-

P.Bhaskar and others.

…Petitioners.

And

The Government of A.P.,rep.by its Secretary, Revenue Department, Secretariat, Hyderabad and others.

…Respondents.

W.P.No.10965 of 2005

Between:-

D.Venkateshwar Rao

…Petitioner

And

The Government of Andhra Pradesh Rep.by its Secretary, Revenue Department, Secretariat, Hyderabad and others.

Date: 22-08-2005.

COMMON ORDER: -

The petitioners in W.P.No.10604 of 2004 are the applicants in O.A.No.6246 of 1998 on the file of the Andhra Pradesh Administrative Tribunal, Hyderabad (for short 'Tribunal'). They filed the said original application for the following reliefs:

> (a) to hold that the applicants are entitled to be placed above the General Candidates of 1990 batch Deputy Collectors and consequently;

(b) to declare the action of the respondents in not placing the applicants above the General Candidates of 1990 batch Deputy Collectors as illegal, arbitrary and unconstitutional and consequently;

(c) to direct the respondents to place the applicants over and above the General Candidates of 1990 batch of Deputy Collectors with all consequential benefits like arrears of pay, seniority and promotion;

and for the consequential amended relief

to direct the respondents to place the names of the applicants also before the Selection Committee constituted for the purpose of selecting I.A.S.

The said O.A. was dismissed by order dated 04-11-2003.

2. One Mr. D. Venkateshwar Rao filed W.P.M.P.No.13538 of 2005 seeking permission to implead him as petitioner No.8 in W.P.No.10604 of 2004, but, it is said due to an opposition for impleading him as petitioner No.8, learned Counsel for the said petitioner sought permission to withdraw the said petition, and accordingly, the said petition was dismissed as withdrawn on 28-04-2005. Thereafter, the said petitioner filed W.P.No.10965 of 2005 with leave of the Court questioning the order of the Tribunal dated 04-11-2003 passed in O.A.No.6246 of 1998 and to declare the action of the official respondents 1 to 4 in not placing the petitioner above the General candidates recruited in pursuance of Advt.No.8/1990 of the second respondent, as illegal, arbitrary and contrary to G.O.Ms.No.234 GAD (SER.-A) Department dated 27-03-1991 and consequently to direct the respondents 1 to 4 to place the petitioner above the candidates recruited in General category in pursuance of Advt.No.8/1990 of the second respondent.

3. The writ petitions were heard by a Division Bench of this Court consisting of Hon'ble Smt. Justice T.Meena Kumari and Hon'ble Sri Justice L.Narasimha Reddy and two separate judgments were delivered on 07-07-2005, expressing difference of

opinion. The Hon'ble
Smt. Justice T. Meena Kumari allowed the writ petitions setting aside the order of the Tribunal whereas the Hon'ble Sri Justice L.Narasimha Reddy dismissed the writ petitions upholding the order passed by the Tribunal.

4. In view of the dissenting judgments, the matter was referred to this Court.

5. Heard Sri E.Manohar, learned senior Counsel for
Sri M.P. Chandramouli, learned Counsel for the petitioners in W.P.No.10604 of 2004; Sri B. Sudhakar Reddy, learned Counsel for the petitioner in W.P.No.10965 of 2005; Sri C.V. Mohan Reddy, learned Advocate General, for the State; Sri M. Vijaya Kumar, learned Standing Counsel for the Andhra Pradesh Public Service Commission (for short 'APPSC); and Sri Nooty Rama Mohan Rao, learned Counsel for the un-official respondents.

6. It is the case of the petitioners that they are all Scheduled Tribe candidates and 12 unfilled ST vacancies of Deputy Collector in promotion quota carried forward were converted to that of the limited direct recruitment by Government vide Orders of 1991 and therefore, as per the notification Advt. No.8/90 dated 01-08-1990 issued by the APPSC for recruitment of the anticipated vacancies of General/Limited Candidates to Group-I and Group II-A services, the Limited Recruitment shall precede over the General Recruitment. Therefore, the Limited Recruitment Candidates for the post of Deputy Collectors shall have to be placed over and above the General Recruitment Candidates pursuant to the said composite Notification Advt.8/90.

7. It is the case of the respondents that 12 vacancies of the Deputy Collectors were converted for the Direct Recruitment in G.O.Ms.No.264, Revenue, Dated 01-04-1991 and therefore, the said 12 ST candidates cannot be placed over and above the General candidates, whose vacancies were not there as on 01-05-1990 and were subsequently converted. The conversion of the 12 S.T. promotion vacancies of Deputy Collectors into Direct Limited Recruitment was subsequent to 01-05-1990. The Tribunal delved deep into the matter and settled the controversy.
The APPSC and the State Government have only implemented earlier directions of the Tribunal and therefore, the petitioners are not entitled for any relief. The second writ petition is hopelessly barred by limitation and both the writ petitions are liable to

be dismissed on the ground of laches on their part. Some of the General Candidates have also got promotions to the Special Grade Deputy Collectors and at the verge of considering their cases for conversion to I.A.S., the petitioners have resorted to file the said O.A. and the writ petitions. The conversion of 12 promotional S.T. vacancies into that of the Direct Limited Recruitment cannot be said as Limited Recruitment, but it is Special Recruitment alone and therefore, the petitioners cannot have a march over the General recruitees. It is further stated that the fifth respondent in W.P.No.10604 of 2004 who is also an ST candidate was selected, as Deputy Collector from among the General candidates pursuant to the common notification and therefore, the petitioners cannot be placed above the fifth respondent, without considering his case in the quota of the special recruitment. It is further stated that there were 34 vacancies of the Deputy Collectors and the fifth respondent is the only ST candidate selected among the Deputy Collectors and there are four other ST candidates selected for other posts other than the Deputy Collectors and therefore, the petitioners cannot claim seniority over and above 34 Deputy Collectors who are directly recruited in the General Recruitment.

8. It is further stated that Rule 33(a) of the Andhra Pradesh State and Subordinate Service Rules (for short 'Rules) is the only Rule that governs the fixation of the seniority and in the absence of any exemption exempting Rule 33(a) of the Rules, the petitioners cannot claim seniority over the General candidates without impleading them and therefore, the writ petitions are liable to be dismissed on the ground of non-joinder of necessary parties. For the General candidates, main examination was held in November, 1991 and the selection process was over by December, 1993 and General candidates were appointed pursuant to G.O.Ms.No.1265 dated 09-12-1993 and whereas the main examination for the limited recruitment was over in May, 1993 and the petitioners were appointed by the orders of G.O.Ms.No.1251 dated 09-12-1994 i.e. a year after the General Candidates were appointed as Deputy Collectors and they have made a representation for the first time in May, 1998 and therefore, the writ petitions are liable to be dismissed on the grounds of laches as well as non-impleading the proper and necessary parties.

9. The learned Advocate General states that though in G.O.Ms.No.264 dated 01-04-1991 the words "Limited Recruitment" were stated, but which do not fit into any of the

provisions of Rule 22 of the Rules, and therefore, it was a Special Recruitment converting
the 12 ST carried forward vacancies from promotion quota and those vacancies were converted for the first time on 01-04-1991,
in exercise of the powers under Rule 47 of the Rules, relaxing the relevant rules of Rule 2 of Andhra Pradesh Civil Service (Executive Branch)
Rules, 1992 and Rule 29 (b) of the Rules so as to enable the Commission to conduct a Limited Recruitment to fill up the said 12 ST carried forward vacancies. As per the judgment of the Tribunal, the vacancies as on
01-05-1990 alone shall be filled up and the vacancies of the petitioners were not created for Limited Direct Recruitment as on 01-05-1990 and therefore, the petitioners cannot have a march over the General Recruitment Candidates as Deputy Collectors whose vacancies arose as on 01-05-1990. Rules 29(a) and 33(a) of the Rules were not exempted and therefore, as per Rule 33(a) of the Rules, the petitioners cannot claim seniority over the General candidates. It is said that the said controversy has been resolved by the Tribunal in the earlier batch of O.A.s, being O.A.Nos.38195 of 1991 and batch dated 04-06-1992. The relevant facts to resolve the controversy are as follows--

10. The APPSC issued Advertisement No.8/90 on 01-08-1990 advertising the names of posts, stating that applications are invited up to 5-00 P.M. on 31-08-1990 for direct recruitment (General/Limited) to the posts of Deputy Collectors in APPSC Executive Branch and other Group-I and Group II-A services. It is stated that the results in respect of the list of successful candidates for filling up of vacancies will be drawn up in respect of the posts likely to be reported during 1990-91.
The controversy is only in respect of the posts of the Deputy Collectors in A.P. Civil Services Executive Branch alone. Admittedly, the number of vacancies have not been notified or identified. The notification indicates that a special rule for physically handicapped persons, Scheduled Castes, Scheduled Tribes and Backward classes etc., is applicable as provided for in the relevant Rules. It is also indicated that an age relaxation of 10 years was given for SCs and STs to apply for the vacancies meant for limited recruitment subject to maximum age of 45 years. The date of preliminary examination will be on 25-11-1990 and the main examination was indicated to be held in the month of February/March, 1991. In the meanwhile, the

Government issued orders in G.O.Ms.No.234 GAD dated 27-03-1991. The said G.O. reads as follows---

"GOVERNMENT OF ANDHRA PRADESH

ABSTRACT

PUBLIC SERVICES – State and Subordinate Services – Special drive for limited recruitment to fill up the backlog vacancies reserved for Scheduled Castes and Scheduled Tribes candidates in the context of Direct recruitment Ambedkar's Centenary Celebrations – Orders – Issued.

GENERAL ADMINISTRATION (SERVICES –A) DEPARTMENT

G.O.Ms.No.234. Dated 27th March, 1991

ORDER:

Article 335 of the Constitution of India casts an obligation on the State Government to consider the claims of the members of Scheduled Castes and Scheduled Tribes in making appointment to the services or posts in connection with the affairs of the State. Having regard to the above provision adumbrated in the Constitution, special provisions have been made in the A.P. State and Subordinate Services Rules for special representation of the specified communities. According to General Rule 22 contained therein, a limited recruitment confined to the members of the Schedule Castes and Scheduled Tribes shall be under taken to make good the shortfall in the representation of the members belonging to the Scheduled Castes and Scheduled Tribes and any general direct recruitment open to all candidates to fill up the existing vacancies shall be undertaken only after this limited recruitment has been made. For this purpose, the existing vacancies in the various categories to the extent of the shortfall noticed and carried forward according to rules should be filled up first through limited recruitment and the remaining vacancies should thereafter be filled up by direct recruitment in the normal course. In the context of Dr. Ambedkar's Centenary Celebrations it has been decided that a special drive be launched to hasten up this limited recruitment in compliance with the rules as stated above.

2. The Andhra Pradesh Public Service Commission will undertake limited recruitment in respect of all categories of posts which are within its purview, wherever there is a shortfall in the representation of the members of the Scheduled Castes and Scheduled Tribes and where such

vacancies meant for them are carried forward according to the provisions contained in General Rule 22 of the A.P. State and Subordinate Service Rules. All the appointing authorities are therefore, requested to report the vacancies to be filled through such limited recruitment to the Andhra Pradesh Public Service Commission within one month.

3. The Heads of Departments and other appointing authorities in respect of posts which are outside the purview of the Andhra Pradesh Public Service Commission shall also undertake similar limited recruitment through the authorized recruiting agencies to the extent of shortfall in the representation of the members of the Scheduled Castes and Scheduled Tribes which have been carried forward in terms of General Rule 22 mentioned in the above para confining the limited recruitment to the members of the Scheduled Castes and Scheduled Tribes.

4. The method of selection of candidates to be followed for the limited recruitment shall be the same as is being adopted for the general recruitment.

5. The limited recruitment shall be subject to the provisions of the Andhra Pradesh Public Employment (Organization of Local Cadres and Regulation of Direct Recruitment) Order, 1975, relating to preference in favour of 'Local Candidates' in respect of such categories of posts to which the provisions of the said orders are applicable.

6. The Andhra Pradesh Public Service Commission and the other appointing authorities are requested to take immediate action to conduct and complete this limited recruitment within a period of six months.

(BY ORDER AND IN THE NAME OFL THE GOVERNOR OF ANDHRA PRADESH)

NARENDRA LUTHER

CHIEF SECRETARY TO GOVERNMENT

To

All Departments of Secretariat (5 copies each)

All Heads of Departments.

The Secretary, Andhra Pradesh Public Service Commission, Hyderabad.

All Collectors."

11. The said G.O. was issued on a special drive for Limited Recruitment to fill up

backlog vacancies reserved for Scheduled Caste and Scheduled Tribe candidates in the context of Direct Recruitment on account of Ambedhkar Centenary celebrations. It is specifically stated that Article 335 of the Constitution of India casts an obligation on the State to consider the claim of the SCs and STs in making appointments to the services and accordingly special provisions have been made in the Rules for special representation of the specified communities. According to Rule 22 of the Rules, a Limited Recruitment confined to the members of the SCs.,and STs., shall be undertaken to make good the shortfall in the representation of the members belonging to the SCs and STs and any General Direct Recruitment open to all candidates to fill up the existing vacancies shall be undertaken only after the Limited Recruitment has been made. For the said purpose, it was decided to fill up the carried forward unfilled promotional posts first, through the Limited Direct Recruitment before the general direct recruitment. In the context of Ambedhkar's Centenary celebrations, it has been decided that a special drive be launched to hasten up this Limited Recruitment. Accordingly, the appointing authorities were requested to report the vacancies to be filled through such Limited Recruitment through APPSC within one month. The APPSC was also requested to take immediate action to conduct and complete the Limited Recruitment within a period of six months. The aforesaid policy decision was taken in deviation to the normal course of filling up of unfilled carried forward posts by Limited Recruitment, before the Direct Recruitment, but as a special drive to hasten up the Limited Recruitment, to make the shortfall in the representation of the members of the SCs and STs where such vacancies meant for them.

12. Pursuant to the said policy decision taken by the Government to hasten up the Limited Recruitment as a special drive on account of
Dr. Ambedhkar's Centenary celebrations, the Government, issued orders in G.O.Ms.No.264 dated 01-04-1991 which is extracted as under:-

"GOVERNMENT OF ANDHRA PRADESH

A B S T R A C T

PUBLIC SERVICES – A.P.S.C.(Ex.Br.) Limited Recruitment of Deputy Collectors – Filling up of carried forward vacancies of S.Ts by Limited Recruitment vacancies – Notified – Orders – Issued.

REVENUE (SERVICES-I) DEPARTMENT

G.O.Ms.No.264 Dated: 1-4-1991.

Read the following:-

From the CLR D.O.Lr.No.D1/3586/90, dt.15-11-90.

ORDER:

In the meeting of the Committee on Welfare of Scheduled Tribes held on 27-10-90, the committee was informed that 12 S.T. carried forward vacancies remained unfilled for want of qualified S.T. candidates for promotion to the category of Deputy Collectors and that in view of large number of carried forward vacancies the Chairman of the above Committee has suggested to fill up the above vacancies by conducting limited recruitment.

2. The suggestion of the Chairman of the Committee on Welfare of Scheduled Tribes has been examined by the Commissioner of Land Revenue and he has stated among others that 12 carried forward vacancies of STs now available from promotion quota are as per the roster maintained for appointment to the category of Deputy Collectors by transfer/promotion. They are not meant for direct recruitment. If a limited recruitment is to be conducted to fill up these 12 carried forward vacancies the ratio of 2:1 fixed in Rule 2 of the A.P.C.S.(Ex.Br.) Rules may be exceeded in so far as the direct recruits are concerned. In order to conduct limited recruitment as suggested by the Chairman of the Committee, Rule 2 of the A.P.C.S (Ex.Br.) rules needs to be relaxed in so far as the ratio of 2:1 is concerned. Similarly, the 12 carried forward vacancies will have to be exempted from the purview of Rule 29(b) of the A.P. State and Subordinate Service Rules **and to be brought within the purview of Rule 22(ii)(e) of the said Rules** so as to notify these vacancies to be Andhra Pradesh Public Service Commission to conduct limited recruitment as the Public Service Commission to conduces the general recruitment for appointment to the posts of Deputy Collectors.

3. The Commissioner of Land Revenue has finally requested to consider relaxation of above relevant Rules in order to conduct limited recruitment to fill up 12 S.T. carried forward vacancies.

4. Government have examined the proposal of the Commissioner of Land Revenue for filling up 12 S.T.carried forward vacancies through limited recruitment in relaxation of relevant rules as suggested by the Chairman of the Committee on Welfare of S.Ts., and they accept the proposal of Commissioner of Land Revenue to relax the relevant rules and so notify 12 S.T carried forward vacancies of Deputy Collectors

to Andhra Pradesh Public Service Commission to conduct limited recruitment.

5. Under Rule 47 of A.P. State and Subordinate Service Rules Governor of Andhra Pradesh hereby relaxes Rule 2 of A.P.C.S (Ex.Br.) Rules and Rule 29(b) of A.P. State and Subordinate Service Rules so as to enable the Andhra Pradesh Public Service Commission to conduct limited recruitment to fill up 12 S.T. carried forward vacancies.

6. The Secretary, Andhra Pradesh Public Service Commission is requested to take immediate necessary action to conduct limited recruitment for the 12 S.T. carried forward vacancies of Deputy Collector and send list of selected candidates to Government for taking further action in the matter.

(BY ORDER AND IN THE NAME OF THE GOVERNMENT OF ANDHRA RADESH)

K.S.R.MURTHY

PRL.SECRETARY TO GOVERNMENT

To

The Secretary, Andhra Pradesh Public Service Commission, Hyderabad.

The Commissioner of Land Revenue, Hyderabad."

The perusal of the D.O.Lr.No.D1/3586/90, dated.15-11-90, referred in the aforementioned G.O. goes to show that the Committee on Welfare of Scheduled Tribes in its meeting held on 27-10-1990 informed that

12 ST carried forward vacancies remained unfilled for want of qualified ST candidates for promotion to the category of Deputy Collectors and therefore, the Chairman of the Committee on Welfare of Scheduled Tribes suggested to fill up those vacancies by conducting limited recruitment. The said suggestion was examined with reference to the relevant rules.

It is stated that 13 vacancies of STs remain unfilled during panel year

1983-84 for want of qualified ST candidates. Those vacancies have been carried forward to the panel year 1987-88. Out of the 13 carried forward vacancies only 1 ST candidate has been promoted as Deputy Collector. Thus, there remained 12 ST carried forward vacancies for the year

1987-88. The CLR further stated that according to Rule 22 (ii) (e) of the Rules if in

any recruitment, qualified candidates belonging to ST are not available for appointment to any or all vacancies reserved for them,

a Limited Recruitment confined to candidates belonging to SCs/STs may be made immediately after General Recruitment to select and appoint qualified candidates from among the persons belonging to these communities to fill such reserved vacancies. According to Rule 29(b) of the Rules, where an appointment to any service, class or category is according to rules both by direct recruitment and by transfer, vacancies against which persons have been recruited directly shall be regarded as distinct group while all other vacancies shall be regarded as another distinct group, and appointment to fill members in accordance with

sub-rule (a) shall be made separately in each of these groups. According to Rule 2 of the APCS (Ex.Br.) Rules, every 3rd of the substantive vacancies shall be filled by direct recruitment that is in the ratio 2:1 between the promotees and direct recruitees. The 12 carried forward vacancies of STs now available for promotion quota as per the roster maintained for appointment to the category of the Deputy Collector by transfer/promotion and as they are not meant for direct recruitment, if a Limited Recruitment is to be conducted to fill up the 12 carried forward posts of the Deputy Collectors, the ratio of 2:1 fixed in Rule 2 of the Rules may have to be relaxed in order to conduct Limited Recruitment as suggested by the Chairman of the committee and similarly the 12 carried forward vacancies will have to be exempted from the purview of the Rule 29(b) of the Rules and to be brought within the purview of Rule 22 (ii) (e) of the said Rules to conduct Limited Recruitment as the Public Service Commission conducts the General Recruitment for appointment to the post of Deputy Collectors. Accordingly, the Commissioner recommended for the relaxation of Rule 2 and exemption of Rule 29(b) of the Rules. The Government examined the proposal of the Commissioner and in exercise of powers under Rule 47 of the Andhra Pradesh State and Subordinate Service Rules the Governor of Andhra Pradesh relaxed the said rules to enable the APSC to conduct Limited Recruitment to fill up 12 ST carried forward vacancies under Rule 22(ii)(e) of the Rules. The Government also requested the APSC to take immediate necessary action to conduct Limited Recruitment for the 12 ST carried forward vacancies of the Deputy Collector. As the Preliminary examination was held pursuant to the composite notification for General as well as Limited Recruitment on

27-01-1991 and Second Preliminary Examination was also held on

14-04-1991 pursuant to the relaxation of age to the candidates other than the STs

and SCs, several ST candidates filed the O.A.Nos.38195 to 38220 of 1991 in October, 1991 before the Tribunal making a grievance about the combining of both Direct and Limited Recruitment and raised a controversy about the manner of conducting the examinations for General as well as Limited Recruitment at a time without notifying the number of vacancies for the General Recruitment and in fixing a cut-off mark of '88' for limited recruitment.

Therefore, to resolve the said controversy, a Division Bench of the Andhra Pradesh Administrative Tribunal consisting of Hon'ble Sri Justice Upendralal Waghray and the Hon'ble Member Mr. K.V.V. Subrahmanyam, on 07-10-1991, directed the Standing Counsel of APPSC to furnish the required material. On perusal of the material and after passing several orders in the said O.As. from time to time, it was found that the cut-off mark to fill up the 14 ST vacancies was found fault with and the action of the APPSC was deprecated by order dated 20-12-1991, which reads as follows--

> "…….When the cases are called for final hearing today, Mrs. K. Shanti representing Standing Counsel sought adjournment. The casual and callous manner in which the adjournment was sought in the batch of cases, which were already part heard, is highly deprecated. The respondent-Public Service Commission must be aware that the Tribunal had granted certain interim directions to proceed with the examination and not to evaluate the answer scripts until further orders of the Tribunal. The Tribunal had also directed not to hold supplementary examinations which were said to have been scheduled from
>
> 17th December, 1991, and for that reason the cases were directed to be listed for final hearing on 3-12-1991. In spite of the urgency involved in the matter, it is regrettable that adjournment is again sought in the part heard cases on behalf of the Public Service Commission.
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> In view of the interim directions granted by the Tribunal, all the cases have to be heard and disposed of expeditiously and for that reasons the cases were already heard in part. Post finally on 26-12-1991. Both sides are informed that no further adjournments will be allowed on that day.
>
> Communicate the above observations to the Secretary to the A.P. Public Service Commission."

13. The said O.As. were adjourned from time to time at the request of the learned Standing Counsel for the APPSC and after perusal of the material furnished by the APPSC to resolve the controversy, the Tribunal framed the following points to be decided—

a. The legality of the action of the Commission in issuing advertisement No.8/90 for direct recruitment to posts in Group-I State Service without receiving any requisition of vacancies or specifying even estimated number of vacancies and proposing to hold a single examination and selection for general and limited recruitment.

b. Effect of holding two different preliminary examinations on 21-01-1991 and 21-04-1991 for same selection.

c. The legality of the procedure adopted by the Commission for calling the candidates for main examination including adopting ”88” as cut off mark for candidates who appeared at the preliminary examination.

d. The legality of the stand of the Commission to select for the vacancies of years subsequent to which the selection was being held and also its effect on determining the cut off mark as “88”.

e. The relief that may be granted.

14. Insofar as Point No. (a) is concerned, the Tribunal held that the procedure for selection of the General candidates is indicated in G.O.Ms.103 and other Government orders which has been accepted by the APPSC and by combining both the examinations for Limited and General recruitment, more problem has been created and in Limited Recruitment, the competition will have to be confined only to the candidates for whom it was held. The object of preliminary examination is to screen candidates. Eliminating candidates belonging to ST and SC on the ground of not obtaining cut-off marks in the General Recruitment for competing for Limited Recruitment is not justified. It was also observed that the Commission fixed the cut-off marks on the basis of vacancies notified on the date of determining the cut-off marks. Taking into account of the vacancies notified from time to time on several dates without clarifying the year to which the vacancy relates, is not only violative of the scheme of selection, but is also arbitrary and accordingly the action of the APPSC in issuing Notification No.8/90 in respect of Group-I Services without vacancies being intimated to it or being aware of them and also combining the General Recruitment and Limited Recruitment in the same selection process, is not

legal.

Insofar as Point No. (b) is concerned, the Tribunal held that the recruitment to such posts must not only satisfy the statutory requirements, and the executive instructions in terms of notification, but also the mandate of Articles 14 and 16 of the Constitution of India and should inspire confidence in the selection process.

Insofar as Point No. (c) is concerned, The Tribunal held that as per the instructions of the Government in G.Os. of 1991, a separate Limited Recruitment has to be conducted and, therefore, the action of the APPSC in having a common selection process for an advertisement of an earlier year and adopting '88' cut-off mark for all, has resulted in deprivation to the candidates to be selected for the posts in the limited recruitment.

The action of the Commission in adopting a uniform cut-off mark i.e.,'88' for vacancies meant for General and Limited Recruitment and following a common selection process is not legal. There are several other infirmities in fixing the cut-off mark, for example, by taking into account the vacancies, which are not meant for the year of recruitment, but they may not be material in view of the order being passed.

In respect of Point No. (d), the Tribunal held that neither the Government nor the APPSC are justified in violating the statutory rules and instructions referred to earlier which form a scheme for Direct Recruitment. If these are not adhered to, the controversy about the seniority between direct recruits and persons appointed by transfer or by promotion, is bound to arise. To avoid further litigation of this nature, it is expected that both the Government and the APPSC will follow the statutory rules and the executive instructions issued by them.

15. Insofar as Point No. (e) is concerned, it was held that a candidate who is generally a raw graduate and has appeared for Direct Recruitment for public post cannot be aware of any illegalities in the selection process. It is essential that the process of selection inspire confidence in public. Though there are infirmities in the selection process pointed out earlier, setting aside the entire process at this stage

may not be just. The selection process can be salvaged in part in the following manner and in accordance with the directions given hereunder. Accordingly, the O.As. were disposed of on 04-06-1992 with the following directions--

a. The selection for general recruitment pursuant to the Advt. No.8/90 as well as the supplemental advertisement, shall be confined to the vacancies meant for direct recruitment for the various services which were available on 1-5-1990 as contemplated by G.O.Ms.No.103 GAD dt.3-2-67. For this purpose the State Government should immediately arrive at the correct figure of vacancies for each service (together with reservations under Rule 22 of the General Rules) and communicate the same to the Commission. The General Administration Department under the Chief Secretary, will co-ordinate and monitor the correct number of vacancies meant for such direct recruitment. For the selection for these vacancies the result of the main examination already held together with the oral test or interview shall be the basis. The Commission has to take steps to call for interview such number of candidates as are required in terms of the advertisement, keeping in view the vacancies and the ranking of the candidate in the main examination. This process should be completed expeditiously preferably within a period of four months.

b. A separate main examination to be held for selection of the candidates for the vacancies to be filled by limited recruitment. The number of vacancies available at the relevant time including G.Os. of 1991 referred to earlier together with the ranking of the SC and ST candidates in the preliminary examination may be used for calling them for the main examination and for selection. The Commission to fix a separate cut off mark on the basis of the relevant criteria, namely, number of vacancies, number of candidates available and the requirements of the notification. This should also be done expeditiously preferably within a period of six months.

c. The candidates belonging to SC and ST who have come up in the general recruitment in accordance with their quota in a selection as per direction (a) need not be disturbed and the remaining candidates belonging to SC and STs to be considered for limited recruitment as per direction (b).

d. The State Government will forthwith take steps for identifying the vacancies for general direct recruitment for Group-I service arising subsequent to the relevant date in 1990 as contemplated by G.O.Ms.No.103. On the vacancies being notified, the Commission will proceed to issue the advertisement indicating the year for which selection relates and the approximate number of vacancies. The vacancies which are to be included in the selection pursuant to this direction shall be deleted from the selection to be held as per direction (a).

e. Any candidate who has secured less than the cut off mark (i.e.88) in the preliminary examination but has appeared pursuant to any interlocutory order of the Tribunal or otherwise, will not be considered as eligible for the main examination.

f. To dispel grievances regarding valuation in the second preliminary examination, it is appropriate that the Commission publishes on its notice-board and makes available for inspection by any candidate, list of marks obtained by candidates who are called for oral test on the basis of the result in the main examination as per direction (a).

g. The government and the Commission take steps for a regular direct recruitment as contemplated by the statutory provisions referred to earlier and G.O.Ms.No.103.

20. Candidates belonging to SC and ST some of whom are applicants in the O.As. will have to appear for a separate main examination in terms of the directions in (b). O.As. in which the applicants (many of whom are SC & ST) challenged the fixing of cut off mark of '88' are disposed of in view of directions in (b). O.As. in which the proposal of the Commission to hold a second main examination pursuant to interlocutory orders of the Tribunal is questioned are disposed of in terms of the directions contained above. This will not affect the rights of any candidates, who have obtained more than cut off mark "88' to be considered for selection on the basis of main examination already held. No costs."

16. A careful reading of the aforesaid directions makes it abundantly clear that the Advt. No.8/90 was confined for the Direct Recruitment as well as Limited Recruitment. But insofar as the Direct Recruitment for various services is concerned, it was directed that the vacancies available as on 01-05-1990, as contemplated by G.O.Ms.No.103 dated 03-02-1967, shall alone be taken into account. Accordingly, the Government was directed to communicate the number of vacancies available on 01-05-1990 to the APPSC.

Insofar as the selection for the General Recruitment as per direction (a) is concerned, it is to be noticed that as per the earlier interim orders dated 07-11-1991 of the Tribunal in the said O.As. the common main examination was already over on 09-11-1991 and therefore, the Commission was directed to call for the interviews from the General candidates keeping in view the vacancies and ranking of the candidates in the main examination and to complete the said process within a

period of four months.

17. Insofar as the Limited Recruitment is concerned as indicated in directions (b) and (c), as the main examination was not conducted for Limited Recruitment, it was directed to conduct main examination for the limited recruitment to the number of vacancies available at the relevant time including G.Os. of 1991 without reference to the earlier cut-off marks and to fix up a separate cut-off mark keeping in view of the number of vacancies, and the number of candidates available, within six months.
It was made clear that the candidates who belong to the SCs and STs selected in the General Recruitment in accordance with their quota in a selection as per direction (a) need not be disturbed and the candidates belonging to the SCs and STs to be considered for Limited Recruitment as per direction (b). Direction (b) makes it clear that the Limited Recruitment has to take place to the number of vacancies available as on 01-05-1990 including G.O.Ms.No.234 dated 07-03-1991 and G.O.Ms.No.264 dated 01-04-1991, making use of the earlier preliminary examinations for conducting the main examination for selection. The direction given at (d) also makes it clear that insofar as General Recruitment is concerned, the vacancies as directed in direction No. (a) has to be filled up in respect of the vacancies available as on 01-05-1990 alone and the subsequent vacancies have to be advertised later and the vacancies that had arisen after 01-05-1990 have to be deleted from the selection to be held as per the direction (a). It also makes it clear that a candidate who has secured less than the cut of mark of '88' in the preliminary examination, but who has appeared pursuant to any interlocutory order of the Tribunal or otherwise, will not be considered as eligible for main examination of the General Recruitment. That means the cut-off mark in the preliminary examination for the General Recruitment was upheld.

Accordingly, in the last paragraph of the judgment, the Tribunal made it clear that the candidates belonging to SCs and STs some of whom are the applicants in O.As. and who challenged the cut off mark of '88' are permitted to sit for separate main examination in terms of direction(b), that is to say that the APPSC has to fix separate cut-off mark on the basis of relevant criteria viz. the number of vacancies available as on 01-05-1990 including G.Os. of 1991 for the purpose of Limited Recruitment. Paragraph 20 of the said order also makes it clear that the O.As. filed by SC and ST

candidates questioning the action of the APPSC in issuing composite notification for general and limited recruitment was disposed of in terms of direction (b) to conduct separate main examination for selection to be filled by Limited Recruitment for number of vacancies available on 01-05-1990 including the said G.Os. issued in 1991.

18. Therefore, the controversy involved in these two writ petitions was resolved by the Tribunal in the aforesaid manner of salvaging the illegality in the selection process. There is no controversy that Limited Recruitment shall precede the General Recruitment. Therefore, the candidates of the Limited Recruitment will be filled up first and then the General Recruitment shall follow. As the said two G.Os. of 1991 have not been questioned by any of the general candidates, it cannot be said that there cannot be Limited Direct Recruitment first. The aforesaid directions of the Tribunal approving the G.Os. of 1991 have become final. Admittedly, there is delay on the part of the APPSC in conducting the main examination for the Limited Direct Recruitment. The delay is not attributable to the ST candidates. As per the said G.Os., 12 Deputy Collector posts have to be filled up by way of Direct Limited Recruitment. The executive instructions issued by the Government in the said two G.Os. to conduct the Limited Recruitment have been upheld in Point No.(b) of the order of the Tribunal stating that the recruitment to such posts must not only satisfy the statutory requirement, but also the executive instructions in terms of the notification and also the mandate of Articles 14 and 16 of the Constitution of India. The said executive instructions issued in the said two G.Os. of 1991 were directed to be implemented as per direction No.(b). Therefore, it cannot be said that 12 Deputy Collector posts, which were unfilled carried forward ST promotion posts, converted to fill up by way of Direct Limited Recruitment, were not available as on the date of notification.

Though the conversion was not available as on the date of advertisement, or as on 01-05-1990, the Tribunal gave specific directions salvaging the legal fiction to conduct a separate examination for selection of the candidates for vacancies to be filled by Limited Recruitment available at the relevant time including G.Os. of 1991. Therefore, any Limited Recruitment shall precede the General Recruitment.

19. In the light of the aforesaid facts and circumstances the question that arises for

consideration is as to whether the petitioners are entitled for the relief as sought for and whether the writ petitions are liable to be dismissed for non-joinder of all the general candidates who have been selected for the posts of Deputy Collectors and whether there are any laches on the part of the writ petitioners.

20. It is stated that pursuant to the directions of the Tribunal in Point (b) of its order, all the Scheduled Tribe candidates who have appeared for the main examination for the General Recruitment have also appeared for the main examination of Limited Recruitment held in May, 1993, but they have not come up for the selection. The limited recruitment was in respect of
12 ST candidates for the post of the Deputy Collectors. Therefore, the question is only in respect of the filling up of the posts of 12 posts of the Deputy Collectors by Limited Recruitment of ST candidates. As on
04-06-1992 the date of the Judgment of the Tribunal in the said O.As., the number of general vacancies of Deputy Collectors were not at all identified. The Government by Letter No.47251/Ser-I/90-3 dated
17-09-1990 sent the estimate of 9 posts of Deputy Collectors for General Direct Recruitment for the year 1990-91 to the APPSC. Only after the judgment of the Tribunal the Government identified 34 posts of Deputy Collector in General Category and intimated for the first time vide its letter No.102302/Ser-1/92-93 dated 08-02-1993 to the APPSC. In the above letter it is stated that 34 vacancies of Deputy Collector are for General Recruitment apart from 12 vacancies for Limited Recruitment. Accordingly, the Secretary of APPSC vide his letter No.1507/RN/3/90 dated 25-03-1993 requested the Government to confirm the vacancy position as on 01-05-1990 reported by the concerned unit officers. It is stated that the posts of Deputy collector were originally estimated to 9 but as per the revised estimate as on 01-05-1990, 34 posts of Deputy Collector excluding ST backlog vacancies. Accordingly, the Government confirmed vide its letter dated 26-05-1993 that the estimate vacancies as on 01-05-1990 for the Direct Recruitment to the post of Deputy collector is 34 apart from 12 ST vacancies. The 12 vacancies are shown as vacancies available as on 01-05-1990. Therefore, I am of the opinion that the Government as well as the APPSC correctly understood the directions of the Tribunal to fill up the 12 ST posts of Deputy Collector by way of Limited Recruitment reserved for STs. The 12 ST posts of Deputy Collector meant for STs were directed

to be recruited by the order of the Government dated 01-04-1991 and it cannot be said that those posts were not available as on 01-05-1990 as the Government directed to fill up the said posts by way of Limited Recruitment first and then only to take up General Recruitment. Though the main examination was conducted on 09-11-1991, the results were not declared till the date of conducting main examination for the Limited Recruitment in May, 1993. Therefore, all the S.T. reserved candidates might not have taken any risk of not appearing the Limited Direct Recruitment in May, 1993. It is stated by the petitioners that all the reserved candidates who have appeared for the main examination also appeared for the Limited Recruitment in May, 1993 and none of them have come up for selection. Therefore, their selection in General Recruitment has not been disturbed. Thus, it cannot be stated that the 5th respondent in the first writ petition and five others who have selected for the posts other than the posts of the Deputy Collector are more meritorious than the 12 S.T. selected candidates for the posts of Deputy Collectors in the Limited Recruitment.

21. Admittedly, Notification in Advt.No.8 of 1990, which was issued by the APPSC, did not specify the number of vacancies for the recruitment year 1990. The stand taken by the APPSC before the Tribunal in the earlier batch of O.As. in justifying its action for determining the cut off mark was that there are 12 ST carried forward vacancies of Deputy Collectors notified in G.O.Ms.No.264 dated 01-04-1991. Admittedly, the APPSC conducted the combined preliminary examination on 27-01-1991 for the Limited Recruitment as well as general but the action of the APPSC in fixing the cut-off mark of '88' was questioned. The result of preliminary examination was announced on 25-07-1991. The main examinations were scheduled to be held on 09-02-1991. Therefore, the action of the APPSC in conducting combined main examination arriving at the cut-off mark '88' was held to be illegal. The O.As. were allowed on 04-06-1992 directing to conduct separate main examination within six months for the Limited Recruitment as main examination was already conducted for General Recruitment. But the APPSC conducted the main examination for limited recruitment only in May,1993. Thus, there is a delay on the part of the APPSC in not implementing the directions given at Point. (b) of the said order of the Tribunal. The General Recruitment candidates were appointed on 09-12-1993 and whereas the limited recruitment candidates were appointed on 09-12-1994. The action of the APPSC in delaying the Limited Recruitment is illegal and contrary to the aforesaid

G.Os., as well as the order of the Tribunal. In fact, the annual list of the members of the Andhra Pradesh Civil Services (Executive Branch) dated 01-01-2001 was published for the first time. It is appropriate to quote the preface of the Special Chief Secretary, which is extracted as follows--

> "There is a need for publishing Seniority Lists of State Service Officers like Deputy Collectors, Tahsildars, etc., at predictable periodicity similar to the Civil Lists of All India Services and Judicial Officers of the State. In the absence of such lists, service matters like seniority have acquired a mystic air around them, unfathomable to all except to those directly dealing with them.
>
> As a first step in bringing about an element of transparency in service matters, seniority list of Deputy Collectors as available in this office is now brought out. I am full aware of the shortcomings of this list. To wit, all service particulars of all officers are not available. Some of the officers may contest their placement in the seniority list. But then they have something to contest now.
> If they successfully contest their placement in the list, their placement as may be modified by the CCLA, the Government or the tribunals will be incorporated in the next edition of this list.
>
> If this publication makes the seniority list a little more transparent than it has so far been, it would have served its purpose.

Hyderabad K.SWAMINATHAN,I.A.S.,

Dated:25-12-2000 Spl. CS & CCLA"

22. Therefore, it is clear that the seniority list of the Deputy Collectors which were brought out for the first time was not at all finalized and it was rightly indicated that some of the officers may contest their placement in the seniority list but if they successfully contest their placement in the list, may have to be modified in the next edition of the list. In fact,
a representation was made in May, 1998 to place the candidates appointed by the order of the Government in G.O.Ms.No.1251 dated
09-12-1994 at the appropriate slots in the seniority list of the Deputy Collectors

Recruitment for the year 1990 for both Limited and General. On the said representation, the Special Chief Secretary & Commissioner Land Revenue, by letter dated 03-06-1998, informed the Government that the delay in selection process by APPSC in respect of Limited Recruitment is only on administrative grounds and their seniority has to be reckoned from the date of appointment as Deputy Collectors and accordingly requested the Government to take a decision in the matter. The Government did not pass any orders in the matter and in the meanwhile there was a move to give promotion to the post of Special Grade Deputy Collectors for the General Candidates, the petitioners have approached the Tribunal by way of the aforesaid O.A.No.6246 of 1998. The Tribunal passed interim orders on 04-08-1998 stating that any promotion to the category of Special Grade Deputy Collectors will be subject to the result of the O.A. It is stated that only during the pendency of the O.A. alone, some of the General Candidates have been promoted to the posts of Special Grade Deputy Collectors. The petitioners are claiming seniority on the basis of the method of selection contending that the date of appointment and joining is not relevant for the purpose of placing the Limited Recruitment candidates over the candidates recruited by General Recruitment. Though the said O.A. was filed and interim orders were obtained on 04-08-1998, it is stated that the official respondents have not filed counter till February, 2003 in spite of several adjournments and therefore, the O.A. was disposed of only on 04-11-2003.

23. Insofar as the contention of the fifth respondent in W.P.No.10604 of 2004, Mr. Sridhar, is concerned, it is stated that the said Sridhar is an ST candidate and if the said post occupied by him is one among the 12 ST limited recruited candidates as Deputy Collectors, it is for the Government to determine his seniority and give him appropriate placement.

24. The issuance of the said G.Os of 1991 to make limited recruitment by relaxation of rules, is not contrary to any quota rule and the said G.O dated 01-04-1991 was not questioned and, therefore, it cannot be said that they are invalid and the said power of relaxation which was exercised by the Government, in fact, was approved in the earlier O.As, by the Division Bench of the Tribunal. The carried forward promotional posts of 12 Deputy Collectors meant for STs were converted to Direct Recruitment

on the recommendation made by the Committee on the welfare of Scheduled Tribes, which is a statutory body for taking care of the welfare of Scheduled Tribes. Article 16(4) of the Constitution of India enables the State to make any special provision for the reservation of the appointment or posts in favour of any backward classes of citizens, which in the opinion of the State is not adequately represented in the services under the State. Accordingly Rule 22 of the Rules was incorporated in the Rules. Since there was no scope for ensuring special representation in the promotion quota of Deputy Collectors, the mode of recruitment was changed by the Government. As such, 6% reservation for STs in the integrated cadre of Deputy Collectors was to be ensured by the Government, was rightly approved by the Tribunal.

25. Article 335 of the Constitution of India provides to take into consideration the claims of the members of Scheduled Castes and Scheduled Tribes consistently with maintenance of efficiency of administration in making appointments to the services and posts in connection with the affairs of the Union or of the State. But Article 335 does not prevent making any provision in favour of the members of the Scheduled Castes and Scheduled Tribes for relaxation in qualifying marks in any examination of lowering the standards of evaluation, for reservation in matters of promotion to any class or classes of service or posts in connection with the affairs of the Union or State. Thus, the reservation for the posts of Scheduled Castes and Scheduled Tribes have been given constitutional recommendation, whereas Article 16(4) of the Constitution of India enables to make any special provision for reservation of Scheduled Castes and Scheduled Tribes. To achieve such object for providing special reservation to the Scheduled Castes and Scheduled Tribes in the cadre of the Deputy Collectors to the extent of 6%, the Government converted the 12 posts of the Deputy Collectors – carried forward promotional posts to be recruited by way of Direct Recruitment, and the said G.Os., of 1991 which were approved by the Tribunal in direction (b) and 20 of its order was not at all implemented by the APPSC and therefore, the petitioners are entitled to be placed over and above the General Candidates in the category of the Deputy Collectors. All the 12 posts of the Deputy Collectors to be filled by way of Limited Recruitment of the promotional posts were available much earlier to 01-05-1990 but as there were no qualified candidates for promotion to the posts of Deputy Collector the method of Limited Recruitment was

resorted to by way of Direct Recruitment to fill the said vacancies.

26. It is stated that if the said candidates of the Limited Recruitment were not placed above the General Candidates, the constitutional mandate of appropriate representation of the Scheduled Tribe community will be denied, apart from violating the said G.Os. of 1991 and directions of the Tribunal. As per the said G.Os. of 1991, Limited Recruitment should have been completed by 27-09-1991 and in that case, the petitioners would have been appointed much earlier to the unofficial respondents. Therefore, it is stated that placing the petitioners with retrospective effect does not arise, as it was a common notification for the General as well as Limited Recruitment relating to the recruitment year 1990. Admittedly, the seniority over the General and the Limited Recruitment in the cadre of the Deputy Collectors was not finalized and therefore, even before the same was finalized the petitioners have approached the Tribunal in August, 1998. Therefore, it is incorrect to state that there are laches on the part of the petitioners in approaching the Tribunal. Had the APPSC conducted the Limited Recruitment first as directed by the Government, the petitioners would have been appointed much earlier to the General Recruitment candidates. But in view of the lapses committed by the APPSC in the process of recruiting the Limited Recruitment vacancies that were not filled and the General Recruitment candidates were offered appointment prior to the Limited Recruitment, they were illegally shown over and above the Limited Recruitment candidates.

27. It is not the question of claiming seniority over the General Recruitment candidates but the question is whether the general candidates are entitled to be placed over the Limited Recruitment candidates. As already stated that the Government directed to take up the Limited Recruitment first, over the General Recruitment and the aforesaid G.Os. of 1991 were also approved by the Tribunal and the Tribunal also directed to conduct a separate main examination for the Limited Recruitment candidates without effecting the rights of the candidates who have been selected for the General Recruitment. Therefore, the only person available in the General Recruitment for the post of Deputy Collectors was the fifth respondent, Sridhar. In view of the aforesaid facts, the question of relaxing Rules

33(a) and 29(a) of the Rules does not arise as the 12 ST posts of Deputy Collectors have to be recruited first before the recruitment of the General Candidates. Though there are lapses on the part of the APPSC, the Government also failed to rectify the lapses and injustice caused to the Scheduled Tribe candidates. The said G.Os. of 1991 were issued on account of centenary celebrations of Dr. Ambedhkar, but the said G.Os. were in fact not implemented to achieve the constitutional object and Rule 22(e) of the Rules in their true letter and spirit and therefore, it cannot be said that the petitioners have no right to be placed over and above the candidates of the General Recruitment candidates.

28. The posts of Deputy Collectors are available in Civil Service (Ex.Br.). The method of recruitment is by promotion from the cadre of Tahsildar and by direct recruitment in the ratio of 2:1. Separate lists of promotees and direct recruitees are maintained inconformity with the respective posts as and when regular vacancy is available as per Rule 29(b) of the Rules. The next promotion post is Special Grade Deputy Collector. In promotion quota as well as in direct recruitment quota, 6% of the posts are reserved for S.T. Category. Due to lack of availability of candidates belonging to S.T.Category in the cadre of Tahsildars, 12 vacancies remained unfilled in promotion quota of the Deputy Collectors much prior to the year 1990 were brought under the purview of Rule 22(e) of the Rules to fill up the said posts of 12 Deputy Collectors by way of limited direct recruitment by the aforesaid G.O., relaxing Rule 2 of A.P.C.S (Ex.Br.) and 29(b) of the Rules in exercise of the powers of the Governor under Rule 47 of the Rules. Therefore, it cannot be said that it was not a limited direct recruitment under Rule 22(e) of the Rules, but it was a special recruitment as contended by the learned Advocate General and the learned counsel appearing for the respondents. If that be so, the limited recruitment has to take place first over and above the General direct recruitment. Therefore, the General direct recruitment candidates cannot claim any right with regard to the seniority as it is not a fundamental right and it can be altered. As the carried forward unfilled posts of 12 Deputy Collectors were brought under the purview of Rule 22(e) of the rules, there cannot be any contravention of Rule 29(a) as the relevant Rules were already relaxed and therefore, I am of the opinion that the question of relaxing Rule 29(a) and 33(a) does not arise.

29. The Government is competent to create a legal fiction in discharging its constitutional obligations i.e., to see the strength of the reserved quota is maintained as per the reservations provided to them. The Government permitted to fill up all the backlog posts of 12 Deputy Collectors reserved for the S.T. Candidates by the aforesaid G.Os., of 1991 and directed to recruit them first by way of Limited Direct Recruitment before the General direct recruitment and therefore, this legal fiction must be given full effect by placing the limited direct recruitees over and above the persons who are recruited through the General direct recruitment.

30. In the case of **PRAFULLA KUMAR DAS Vs. STATE OF ORISSA** the Supreme Court held that an ostensible right to seniority can be altered or denied by the State even with retrospective effect at its discretion in public interest and the seniority is not a fundamental right, but is merely a civil right. Mere hardship cannot be a ground for striking down a valid legislation unless it is held to be suffering from the vice of discrimination or unreasonableness. When a legal fiction is created for the purpose of providing the year of allotment, such legal fiction must be given its full effect.

Both the appointment orders of the direct recruitees dated
9-12-1993 and the limited recruitees for the 12 posts of Deputy Collectors in respect of the Scheduled Tribes Candidates dated 9-12-1994 mentions the year of recruitment as 1990 and when the Limited Recruitment is brought under the purview of Rule 22(e) of the Rules, it is obvious that the limited direct recruitment has to take place prior to the General Recruitment and the limited recruitees cannot be denied their correct placement in the seniority on the ground of delay in conducting the examination in so far as the limited direct recruitment is concerned for the administrative lapses on the part of the APPSC and the Government.

In the case of **M.VENKATESWARLU Vs. GOVERNMENT OF ANDHRA PRADESH** with regard to the promotion, filling up of backlog reserved vacancies are concerned, the Supreme Court held that it is a constitutional obligation under Article 16(4) and (4a) of Constitution of India. Under Rule 47 of the Rules, the Governor is empowered to relax the rigour of the General Rules in such manner as may appear to him to be just and equitable in the interest of justice and equity. Justice can be done only by exercising the power retrospectively, otherwise the object and purpose of Rule 47 of the Rules will be largely frustrated. Relaxation can

be given to a class of persons or an individual. In the present case, relaxation was given only to class of persons who were to be recruited through limited direct recruitment in place of promotees in the existing 12 S.T.backlog carry forward vacancies for filling the constitutional obligation cast upon the State, by issuing the said G.Os. of 1991, which have become final. The Supreme Court also held that no notice need be given to all the persons who are likely to be affected before exercising the power under Rule 47, as the rule ex facie does not contemplate any notice being given, on the ground that it is not a case of considering inter se claim of any particular individual and that it is a case of relaxing the eligibility of a single individual as against many in the given case. In the present case also, the Government in exercise of its powers under Rule 47, the relevant rules were relaxed in favour of the particular class of Scheduled Tribes and brought the said 12 posts of Deputy Collectors under purview of Rule 22(e) of the Rules and the said G.O., is inconformity with the constitutional mandate to fill up the 12 posts of Deputy Collectors from among the reserved category of Schedule Tribes. Therefore, it cannot be said that the candidates of the limited recruitment would not steal a march over the General direct recruitees. Therefore, I am of the opinion that the limited direct recruitees will have to be placed over and above the generally recruited candidates. Hence, the question of contravening Rules 29(a) or 33(a) does arise. I am also of the opinion that there is no need to give any notice to all the persons who are likely to be affected by implementing the G.O.Ms.No.264 dated 01-04-1991 issued exercising the power under Rule 47 of the Rules as held by the Supreme Court and therefore, all the 34 General direct recruitment candidates are not necessarily be impleaded.

It is also pertinent to note that the Supreme Court in the case of **K.MADHAVAN Vs. UNION OF INDIA** held that the Government can even give retrospective date of appointment to any person if the delay in appointment was on account of unjustifiable reasons. In the present case also, the delay has occurred only due to the Administrative reasons on the part of the APPSC and not due to the fault of the petitioners, for which, the petitioners cannot be penalized by placing them below the General direct recruitees by taking the date of appointments into consideration, that too when the petitioners recruitment was brought under the purview of Rule 22(ii)(e) of the Rules.

31. The last General Recruitment was during the panel year 1983-84 and 1987-88. The Limited Recruitment has to take place first before the General Recruitment for the recruitment year 1990. That is the reason why the Government issued G.Os of 1991 to take up the Limited Recruitment first before the General Recruitment. Therefore, it cannot be said that the said G.Os of 1991 have no retrospective effect for the purpose of filling up the said posts by way of Limited Recruitment for the recruitment year 1990. Indisputably, the said Limited Recruitment was made for the recruitment year 1990 and those vacancies were already there long prior to 01-05-1990. If that be so, the tribunal erred in holding that G.O.Ms.No.264 Revenue Department dated 01.04.1991 issued by invoking powers of the Governor under Rule 47 of the Andhra Pradesh State and Subordinate Service Rules was illegal. As the said administrative instructions issued in the said G.O. was already approved by the Division Bench of the Tribunal in the earlier batch of O.As it was erroneously held in the impugned O.A. that the conversion of those posts earmarked for promotion as direct recruitment and notifying the same for the purpose of recruitment was illegal. Under Rule 22 (f) (iii) of the Rules limited recruits have to be appointed first before appointing the general recruits. The composite notification was issued for Limited and General Recruitment and as per the aforesaid administrative notifications of the Government the Limited Recruitment shall take place first, which is inconsonance with the aforesaid rules. Therefore, limited recruits have to be placed over and above the General Recruits. Once the said posts were brought under the purview of Rule 22(e) of the Rules by relaxing the relevant rules that are only required to be relaxed i.e., Rule 29(b) of the Rules and Rule 2 of the APSC (Ex.Br) Rules, there is no requirement to relax Rules 29(a) and 33(a) of the Rules.

32. For the aforesaid reasons, I am of the opinion that there is no any need to relax Rules 29(a) and 33(a) of the Rules and the relevant Rules 29(b) of the Rules and Rule 2 of the APSC (Ex.Br) were only required to be relaxed and accordingly relaxed to bring the said posts under the purview of Rule 22(e) of the Rules and therefore, the petitioners are entitled for the benefit of Rule 22(e) of the Rules for claiming the reliefs. Therefore, I agree with the Judgment of my learned sister Smt.Justice T.Meena Kumari.

Accordingly, the Writ Petitions are allowed and the Judgment of the Tribunal in O.A.No.6246 of 1998 is set aside. No order as to costs.

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V.ESWARAIAH, J

Date: -08-2005.

Shr.